

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1646

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AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 23-2-1-17.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. (a) This section applies to the following:**

- (1) The secretary of state.**
- (2) The securities commissioner.**
- (3) A prosecuting attorney.**
- (4) The attorney general.**
- (5) A designee of a person specified in subdivisions (1) through (4).**

**(b) A person specified in subsection (a) shall not take any action against another person under this chapter solely because a:**

- (1) viatical settlement contract; or**
- (2) fractional or pooled interest in a viatical settlement contract;**

**that was the subject of a transaction in which the other person was involved before March 17, 2000, was not registered under this chapter.**

**(c) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not, before March 17, 2000, comply with the:**

- (1) registration requirements of this chapter; or**

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**(2) requirements of this chapter that apply to a person that offers or sells securities in Indiana; if the other person did not at the time of the offer or sale, and before March 17, 2000, offer or sell securities other than a viatical settlement contract or a fractional or pooled interest in a viatical settlement contract.**

**(d) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not comply with the registration requirements referred to in subsections (b) and (c).**

SECTION 2. IC 23-2-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) A person who offers or sells a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

- (1) the value of the security when the buyer disposed of the security; and
- (2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or for damages, together, in either case, with reasonable attorney's fees, upon the tender of the consideration received by the person bringing the action.

(c) A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in,

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purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues analyses or reports concerning securities and:

- (1) violates section 8, 12.1(b), 14, or 26 of this chapter;
- (2) employs a device, scheme, or artifice to defraud a person; or
- (3) engages in an act that operates or would operate as fraud or deceit upon a person;

is liable to the other person, who may bring an action to recover any consideration paid for advice, any loss due to advice, interest at eight percent (8%) each year from the date consideration was paid, costs, and reasonable attorney's fees less the value of cash or property received due to the advice. It is a defense to an action brought for a violation of section 12.1(b) or 26 of this chapter that the person accused of the violation did not know of the violation and, exercising reasonable care, could not have known of the violation.

(d) A person who directly or indirectly controls a person liable under subsection (a), (b), or (c), a partner, officer, or director of the person, a person occupying a similar status or performing similar functions, an employee of a person who materially aids in the conduct creating the liability, and a broker-dealer or agent who materially aids in the conduct are also liable jointly and severally with and to the same extent as the person, unless the person who is liable sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons liable.

(e) A tender specified in this section may be made at any time before entry of judgment.

(f) A cause of action under this statute survives the death of a person who might have been a plaintiff or defendant.

(g) Action under this section shall be commenced within three (3) years after discovery by the person bringing the action of a violation of this chapter, and not afterwards, **but in no event may an action, unless the period is extended by operation of IC 34-11-5-1, be commenced more than six (6) years after the purchase or sale of a viatical settlement contract or fractional or pooled interest in a viatical settlement contract that occurred before March 17, 2000, and is the subject of the action. This subsection does not affect a remedy that is available to a person bringing a cause of action under IC 27 or IC 34 or based on common law fraud.** No person may sue under this section:

- (1) if that person received a written offer, before suit and at a time

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when the person owned the security, to refund the consideration paid together with interest on that amount from the date of payment to the date of repayment, with interest on:

- (A) interest-bearing obligations to be computed at the same rate as provided on the security; and
- (B) all other securities at the rate of eight percent (8%) per year;

less the amount of any income received on the security, and the person failed to accept the offer within thirty (30) days of its receipt; or

- (2) if the person received an offer before suit and at a time when the person did not own the security, unless the person rejected the offer in writing within thirty (30) days of its receipt.

(h) No person who has made or engaged in the performance of a contract in violation of this chapter or a rule or order under this chapter, or who has acquired a purported right under a contract with knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity.

SECTION 3. IC 27-8-19.8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "applicant" refers to ~~an applicant~~ **a person that applies** for a viatical settlement provider license under this chapter.

SECTION 4. IC 27-8-19.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "insured" refers to an individual ~~who has a catastrophic or life threatening illness or condition~~ **whose life is the subject of insurance under a life insurance policy or contract**.

SECTION 5. IC 27-8-19.8-9.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9.2. An insurance producer that:**

- (1) is licensed under IC 27-1-15.6; and**
- (2) sells a life insurance policy or contract that, less than two (2) years after the insurance producer sells the policy or contract, is the subject of a viatical settlement contract;**

**shall not accept a commission or other remuneration in connection with the viatical settlement contract.**

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SECTION 6. IC 27-8-19.8-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. (a) A viatical settlement contract must establish the terms under which the viatical settlement provider will pay value, in return for the viator's assignment, bequest, devise, sale, or transfer of the death benefit, certificate, or ownership of the insurance policy to the viatical settlement provider.

(b) A viatical settlement contract must provide for the unconditional rescission of the contract by the viator for the longer of the following:

- (1) the period ending not more than fifteen (15) days after the receipt of the viatical settlement proceeds by the viator; or
- (2) the period ending not more than thirty (30) days after execution of the contract.

(c) A viatical settlement contract is rescinded if the insured dies during the rescission period, subject to repayment **to the viatical settlement provider** of all proceeds ~~to the viatical settlement provider~~ **and any premiums, loans, and loan interest that have been paid by the viatical settlement provider.**

SECTION 7. IC 27-8-19.8-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. **(a) A viatical settlement provider or viatical settlement broker shall, not later than the date of application, provide to a viator a brochure approved by the commissioner and describing the viatical settlement process. If a brochure describes only a viatical settlement contract in which the insured does not have a catastrophic or life threatening illness or condition, the brochure may use the term "life settlement" in place of the term "viatical settlement".**

**(b) A viatical settlement provider or viatical settlement broker shall, in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, disclose the following information to the viator not later than the date of application:**

- (1) Possible alternatives to viatical settlement contracts, including accelerated benefits **or policy loans** offered by the issuer of the life insurance policy.
- (2) **Federal and state** tax consequences that may result from entering into a viatical settlement contract, **and that the viator should seek assistance from a professional tax advisor.**
- (3) Possible:
  - (A) adverse effect on eligibility for; or**
  - (B) interruption of assistance provided by;**
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entering into a viatical settlement contract, **and that the viator should seek advice from the appropriate government agencies.**

(4) The viator's right to rescind a viatical settlement contract as provided in section 21 of this chapter.

(5) The amount of any fees paid by a viatical settlement provider to a viatical settlement broker.

(6) A statement that proceeds of the viatical settlement could be subject to claims of creditors.

(7) A statement that:

(A) entering into a viatical settlement contract may cause other rights or benefits under the policy, including conversion rights, waiver of premium benefits, family riders, or coverage of a life other than ~~an individual~~, **the insured**, to be forfeited by the viator; **and**

(B) **the viator should seek advice from a financial advisor.**

(8) The procedure for contacts with the insured.

(9) **That the proceeds of the viatical settlement will be transferred to the viator as provided in section 24.2 of this chapter.**

(10) A statement containing the following language:

"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.".

(11) **That the insured may be contacted by the viatical settlement provider or viatical settlement broker to determine the health status of the insured in accordance with section 24.9 of this chapter.**

(c) The viatical settlement provider shall disclose the following information to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement provider and the viator, before a viatical settlement contract is signed:

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(1) Any affiliation between the viatical settlement provider and the insurer that issued the life insurance policy or certificate that is the subject of the viatical settlement contract.

(2) The name, address, and telephone number of the viatical settlement provider.

(3) If the life insurance policy or certificate that is the subject of the viatical settlement contract was issued as a joint policy or includes family riders or any coverage of an individual other than the insured:

(A) the possible loss of coverage of the other individuals under the policy or certificate; and

(B) that the viator should consult with the viator's insurance producer or the insurer that issued the policy or certificate for advice concerning the proposed viatical settlement contract.

(4) The:

(A) dollar amount of the current death benefit payable to the viatical settlement provider; and

(B) if known, the:

(i) availability of any additional guaranteed insurance benefits;

(ii) dollar amount of any accidental death and dismemberment benefits; and

(iii) viatical settlement provider's interest in the benefits described in items (i) and (ii);

under the policy or certificate.

(5) The:

(A) name, business address, and telephone number of the trustee or escrow agent described in section 24.2 of this chapter; and

(B) right of the viator or insured to inspect or receive copies of the relevant escrow or trust agreements or documents.

(d) A viatical settlement broker shall disclose to the viator, conspicuously displayed in the viatical settlement contract or in a separate document signed by the viatical settlement broker and the viator before a viatical settlement contract is signed, the amount and method of calculation of the viatical settlement broker's compensation.

(e) If a viatical settlement provider transfers ownership or changes the beneficiary of a viaticated policy, the viatical

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**settlement provider shall, not more than twenty (20) days after the transfer or change occurs, inform the insured of the transfer or change.**

SECTION 8. IC 27-8-19.8-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. A viatical settlement provider shall obtain the following before entering into a viatical settlement contract:

- (1) If the viator is the insured, a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence.
- (2) A document signed by the viator and witnessed by two (2) disinterested witnesses in which the viator does the following:
  - (A) Consents to the viatical settlement contract.
  - (B) **If the insured has a catastrophic or life threatening illness or condition**, acknowledges the catastrophic or life threatening illness **or condition**.
  - (C) Represents that the viator has a full and complete understanding of the viatical settlement contract.
  - (D) Represents that the viator has a full and complete understanding of the benefits of the life insurance policy.
  - (E) Acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily.
  - (F) Discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.
- (3) A document in which the insured consents to the release of the insured's medical records.

SECTION 9. **An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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